

SECOND REGULAR SESSION

SENATE BILL NO. 1154

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Read 1st time February 28, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4929S.011

AN ACT

To repeal section 105.955, RSMo, and to enact in lieu thereof one new section relating to the requirements for membership on the Missouri ethics commission.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 105.955, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 105.955, to read as follows:

105.955. 1. A bipartisan "Missouri Ethics Commission", composed of six
2 members, is hereby established. The commission shall be assigned to the office
3 of administration with supervision by the office of administration only for
4 budgeting and reporting as provided by subdivisions (4) and (5) of subsection 6
5 of section 1 of the Reorganization Act of 1974. Supervision by the office of
6 administration shall not extend to matters relating to policies, regulative
7 functions or appeals from decisions of the commission, and the commissioner of
8 administration, any employee of the office of administration, or the governor,
9 either directly or indirectly, shall not participate or interfere with the activities
10 of the commission in any manner not specifically provided by law and shall not
11 in any manner interfere with the budget request of or withhold any moneys
12 appropriated to the commission by the general assembly. All members of the
13 commission shall be appointed by the governor with the advice and consent of the
14 senate from lists submitted pursuant to this section. Each congressional district
15 committee of the political parties having the two highest number of votes cast for
16 their candidate for governor at the last gubernatorial election shall submit two
17 names of eligible nominees for membership on the commission to the governor,
18 and the governor shall select six members from such nominees to serve on the

19 commission.

20 2. Within thirty days of submission of the person's name to the governor
21 as provided in subsection 1 of this section, and in order to be an eligible nominee
22 for appointment to the commission, a person shall file a financial interest
23 statement in the manner provided by section 105.485 and shall provide the
24 governor, the president pro tempore of the senate, and the commission with a list
25 of all political contributions and the name of the candidate or committee, political
26 party, or continuing committee, as defined in chapter 130, RSMo, to which those
27 contributions were made within the four-year period prior to such appointment,
28 made by the nominee, the nominee's spouse, or any business entity in which the
29 nominee has a substantial interest. The information shall be maintained by the
30 commission and available for public inspection during the period of time during
31 which the appointee is a member of the commission. In order to be an eligible
32 nominee for membership on the commission, a person shall be a citizen and a
33 resident of the state and shall have been a registered voter in the state for a
34 period of at least five years preceding the person's appointment.

35 3. The term of each member shall be for four years, except that of the
36 members first appointed, the governor shall select three members from
37 even-numbered congressional districts and three members from odd-numbered
38 districts. Not more than three members of the commission shall be members of
39 the same political party, nor shall more than one member be from any one United
40 States congressional district. Not more than two members appointed from the
41 even-numbered congressional districts shall be members of the same political
42 party, and no more than two members from the odd-numbered congressional
43 districts shall be members of the same political party. Of the members first
44 appointed, the terms of the members appointed from the odd-numbered
45 congressional districts shall expire on March 15, 1994, and the terms of the
46 members appointed from the even-numbered congressional districts shall expire
47 on March 15, 1996. Thereafter all successor members of the commission shall be
48 appointed for four-year terms. Terms of successor members of the commission
49 shall expire on March fifteenth of the fourth year of their term. No member of
50 the commission shall serve on the commission after the expiration of the
51 member's term. No person shall be appointed to more than one full four-year
52 term on the commission.

53 4. Vacancies or expired terms on the commission shall be filled in the
54 same manner as the original appointment was made, except as provided in this

55 subsection. Within thirty days of the vacancy or ninety days before the expiration
56 of the term, the names of two eligible nominees for membership on the
57 commission shall be submitted to the governor by the congressional district
58 committees of the political party or parties of the vacating member or members,
59 from the even- or odd-numbered congressional districts, based on the residence
60 of the vacating member or members, other than from the congressional district
61 committees from districts then represented on the commission and from the same
62 congressional district party committee or committees which originally appointed
63 the member or members whose positions are vacated. Appointments to fill
64 vacancies or expired terms shall be made within forty-five days after the deadline
65 for submission of names by the congressional district committees, and shall be
66 subject to the same qualifications for appointment and eligibility as is provided
67 in subsections 2 and 3 of this section. Appointments to fill vacancies for
68 unexpired terms shall be for the remainder of the unexpired term of the member
69 whom the appointee succeeds, and such appointees shall be eligible for
70 appointment to one full four-year term. If the congressional district committee
71 does not submit the required two nominees within the thirty days or if the
72 congressional district committee does not submit the two nominees within an
73 additional thirty days after receiving notice from the governor to submit the
74 nominees, then the governor may appoint a person or persons who shall be
75 subject to the same qualifications for appointment and eligibility as provided in
76 subsections 2 and 3 of this section.

77 5. The governor, with the advice and consent of the senate, may remove
78 any member only for substantial neglect of duty, inability to discharge the powers
79 and duties of office, gross misconduct or conviction of a felony or a crime involving
80 moral turpitude. Members of the commission also may be removed from office by
81 concurrent resolution of the general assembly signed by the governor. If such
82 resolution receives the vote of two-thirds or more of the membership of both
83 houses of the general assembly, the signature of the governor shall not be
84 necessary to effect removal. The office of any member of the commission who
85 moves from the congressional district from which the member was appointed shall
86 be deemed vacated upon such change of residence.

87 6. The commission shall elect biennially one of its members as the
88 chairman. The chairman may not succeed himself or herself after two years. No
89 member of the commission shall succeed as chairman any member of the same
90 political party as himself or herself. At least four members are necessary to

91 constitute a quorum, and at least four affirmative votes shall be required for any
92 action or recommendation of the commission.

93 7. No member or employee of the commission, during the person's term
94 of service, shall hold or be a candidate for any other public office **or have, at**
95 **any time prior to the person's term of service, been a candidate for an**
96 **elected office where the requirements of holding said office include the**
97 **designation of the candidate's political party affiliation or his or her**
98 **status as an independent candidate.**

99 8. In the event that a retired judge is appointed as a member of the
100 commission, the judge shall not serve as a special investigator while serving as
101 a member of the commission.

102 9. No member of the commission shall, during the member's term of
103 service or within one year thereafter:

104 (1) Be employed by the state or any political subdivision of the state;

105 (2) Be employed as a lobbyist;

106 (3) Serve on any other governmental board or commission;

107 (4) Be an officer of any political party or political organization;

108 (5) Permit the person's name to be used, or make contributions, in support
109 of or in opposition to any candidate or proposition;

110 (6) Participate in any way in any election campaign; except that a member
111 or employee of the commission shall retain the right to register and vote in any
112 election, to express the person's opinion privately on political subjects or
113 candidates, to participate in the activities of a civic, community, social, labor or
114 professional organization and to be a member of a political party.

115 10. Each member of the commission shall receive, as full compensation for
116 the member's services, the sum of one hundred dollars per day for each full day
117 actually spent on work of the commission, and the member's actual and necessary
118 expenses incurred in the performance of the member's official duties.

119 11. The commission shall appoint an executive director who shall serve
120 subject to the supervision of and at the pleasure of the commission, but in no
121 event for more than six years. The executive director shall be responsible for the
122 administrative operations of the commission and perform such other duties as
123 may be delegated or assigned to the director by law or by rule of the
124 commission. The executive director shall employ staff and retain such contract
125 services as the director deems necessary, within the limits authorized by
126 appropriations by the general assembly.

127 12. Beginning on January 1, 1993, all lobbyist registration and
128 expenditure reports filed pursuant to section 105.473, financial interest
129 statements filed pursuant to subdivision (1) of section 105.489, and campaign
130 finance disclosure reports filed other than with election authorities or local
131 election authorities as provided by section 130.026, RSMo, shall be filed with the
132 commission.

133 13. Within sixty days of the initial meeting of the first commission
134 appointed, the commission shall obtain from the clerk of the supreme court or the
135 state courts administrator a list of retired appellate and circuit court judges who
136 did not leave the judiciary as a result of being defeated in an election. The
137 executive director shall determine those judges who indicate their desire to serve
138 as special investigators and to investigate any and all complaints referred to
139 them by the commission. The executive director shall maintain an updated list
140 of those judges qualified and available for appointment to serve as special
141 investigators. Such list shall be updated at least annually. The commission shall
142 refer complaints to such special investigators on that list on a rotating schedule
143 which ensures a random assignment of each special investigator. Each special
144 investigator shall receive only one unrelated investigation at a time and shall not
145 be assigned to a second or subsequent investigation until all other eligible
146 investigators on the list have been assigned to an investigation. In the event that
147 no special investigator is qualified or available to conduct a particular
148 investigation, the commission may appoint a special investigator to conduct such
149 particular investigation.

150 14. The commission shall have the following duties and responsibilities
151 relevant to the impartial and effective enforcement of sections 105.450 to 105.496
152 and chapter 130, RSMo, as provided in sections 105.955 to 105.963:

153 (1) Receive and review complaints regarding alleged violation of sections
154 105.450 to 105.496 and chapter 130, RSMo, conduct initial reviews and
155 investigations regarding such complaints as provided herein; refer complaints to
156 appropriate prosecuting authorities and appropriate disciplinary authorities along
157 with recommendations for sanctions; and initiate judicial proceedings as allowed
158 by sections 105.955 to 105.963;

159 (2) Review and audit any reports and statements required by the
160 campaign finance disclosure laws contained in chapter 130, RSMo, and financial
161 interest disclosure laws or lobbyist registration and reporting laws as provided
162 by sections 105.470 to 105.492, for timeliness, accuracy and completeness of

163 content as provided in sections 105.955 to 105.963;

164 (3) Develop appropriate systems to file and maintain an index of all such
165 reports and statements to facilitate public access to such information, except as
166 may be limited by confidentiality requirements otherwise provided by law,
167 including cross-checking of information contained in such statements and
168 reports. The commission may enter into contracts with the appropriate filing
169 officers to effectuate such system. Such filing officers shall cooperate as
170 necessary with the commission as reasonable and necessary to effectuate such
171 purposes;

172 (4) Provide information and assistance to lobbyists, elected and appointed
173 officials, and employees of the state and political subdivisions in carrying out the
174 provisions of sections 105.450 to 105.496 and chapter 130, RSMo;

175 (5) Make recommendations to the governor and general assembly or any
176 state agency on the need for further legislation with respect to the ethical conduct
177 of public officials and employees and to advise state and local government in the
178 development of local government codes of ethics and methods of disclosing
179 conflicts of interest as the commission may deem appropriate to promote high
180 ethical standards among all elected and appointed officials or employees of the
181 state or any political subdivision thereof and lobbyists;

182 (6) Render advisory opinions as provided by this section;

183 (7) Promulgate rules relating to the provisions of sections 105.955 to
184 105.963 and chapter 130, RSMo. All rules and regulations issued by the
185 commission shall be prospective only in operation;

186 (8) Request and receive from the officials and entities identified in
187 subdivision (6) of section 105.450 designations of decision-making public servants.

188 15. In connection with such powers provided by sections 105.955 to
189 105.963 and chapter 130, RSMo, the commission may:

190 (1) Subpoena witnesses and compel their attendance and
191 testimony. Subpoenas shall be served and enforced in the same manner provided
192 by section 536.077, RSMo;

193 (2) Administer oaths and affirmations;

194 (3) Take evidence and require by subpoena duces tecum the production of
195 books, papers, and other records relating to any matter being investigated or to
196 the performance of the commission's duties or exercise of its powers. Subpoenas
197 duces tecum shall be served and enforced in the same manner provided by section
198 536.077, RSMo;

199 (4) Employ such personnel, including legal counsel, and contract for
200 services including legal counsel, within the limits of its appropriation, as it deems
201 necessary provided such legal counsel, either employed or contracted, represents
202 the Missouri ethics commission before any state agency or before the courts at the
203 request of the Missouri ethics commission. Nothing in this section shall limit the
204 authority of the Missouri ethics commission as provided for in subsection 2 of
205 section 105.961; and

206 (5) Obtain information from any department, division or agency of the
207 state or any political subdivision reasonably calculated to lead to the discovery
208 of evidence which will reasonably assist the commission in carrying out the duties
209 prescribed in sections 105.955 to 105.963 and chapter 130, RSMo.

210 16. (1) Upon written request for an advisory opinion received by the
211 commission, and if the commission determines that the person requesting the
212 opinion would be directly affected by the application of law to the facts presented
213 by the requesting person, the commission shall issue a written opinion advising
214 the person who made the request, in response to the person's particular request,
215 regarding any issue that the commission can receive a complaint on pursuant to
216 section 105.957. The commission may decline to issue a written opinion by a vote
217 of four members and shall provide to the requesting person the reason for the
218 refusal in writing. The commission shall give an approximate time frame as to
219 when the written opinion shall be issued. Such advisory opinions shall be issued
220 no later than ninety days from the date of receipt by the commission. Such
221 requests and advisory opinions, deleting the name and identity of the requesting
222 person, shall be compiled and published by the commission on at least an annual
223 basis. Advisory opinions issued by the commission shall be maintained and made
224 available for public inspection and copying at the office of the commission during
225 normal business hours. Any advisory opinion or portion of an advisory opinion
226 rendered pursuant to this subsection shall be withdrawn by the commission if,
227 after hearing thereon, the joint committee on administrative rules finds that such
228 advisory opinion is beyond or contrary to the statutory authority of the
229 commission or is inconsistent with the legislative intent of any law enacted by the
230 general assembly, and after the general assembly, by concurrent resolution, votes
231 to adopt the findings and conclusions of the joint committee on administrative
232 rules. Any such concurrent resolution adopted by the general assembly shall be
233 published at length by the commission in its publication of advisory opinions of
234 the commission next following the adoption of such resolution, and a copy of such

235 concurrent resolution shall be maintained by the commission, along with the
236 withdrawn advisory opinion, in its public file of advisory opinions. The
237 commission shall also send a copy of such resolution to the person who originally
238 requested the withdrawn advisory opinion. Any advisory opinion issued by the
239 ethics commission shall act as legal direction to any person requesting such
240 opinion and no person shall be liable for relying on the opinion and it shall act
241 as a defense of justification against prosecution. An advisory opinion of the
242 commission shall not be withdrawn unless:

- 243 (a) The authorizing statute is declared unconstitutional;
 - 244 (b) The opinion goes beyond the power authorized by statute; or
 - 245 (c) The authorizing statute is changed to invalidate the opinion.
- 246 (2) Upon request, the attorney general shall give the attorney general's
247 opinion, without fee, to the commission, any elected official of the state or any
248 political subdivision, any member of the general assembly, or any director of any
249 department, division or agency of the state, upon any question of law regarding
250 the effect or application of sections 105.450 to 105.496, or chapter 130,
251 RSMo. Such opinion need be in writing only upon request of such official,
252 member or director, and in any event shall be rendered within sixty days that
253 such request is delivered to the attorney general.

254 17. The state auditor and the state auditor's duly authorized employees
255 who have taken the oath of confidentiality required by section 29.070, RSMo, may
256 audit the commission and in connection therewith may inspect materials relating
257 to the functions of the commission. Such audit shall include a determination of
258 whether appropriations were spent within the intent of the general assembly, but
259 shall not extend to review of any file or document pertaining to any particular
260 investigation, audit or review by the commission, an investigator or any staff or
261 person employed by the commission or under the supervision of the commission
262 or an investigator. The state auditor and any employee of the state auditor shall
263 not disclose the identity of any person who is or was the subject of an
264 investigation by the commission and whose identity is not public information as
265 provided by law.

266 18. From time to time but no more frequently than annually the
267 commission may request the officials and entities described in subdivision (6) of
268 section 105.450 to identify for the commission in writing those persons associated
269 with such office or entity which such office or entity has designated as a
270 decision-making public servant. Each office or entity delineated in subdivision

271 (6) of section 105.450 receiving such a request shall identify those so designated
272 within thirty days of the commission's request.

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